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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/682,541

10/10/2003

Pierre Bernard

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EXAMINER

COMSTOCK, DAVID C

ART UNIT

PAPER NUMBER

3733

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DELIVERY MODE

03/19/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/682,541	<b>Applicant(s)</b> BERNARD ET AL.	
	<b>Examiner</b> DAVID COMSTOCK	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 7-11, 14-22 and 25-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-5, 7-11, 14-22 and 25-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Objections***

The claims are objected to because the lines are crowded too closely together, making reading difficult. Substitute claims with lines one and one-half or double spaced on good quality paper are required. See 37 CFR 1.52(b).

### ***Drawings***

The drawings are objected to because the handwritten reference numerals are not clear, and in many cases, the reference numerals are illegible. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 2-5, 7-11, 14-22 and 25-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Richelsoph (U.S. Patent Number 6,740,086), previously cited by examiner on 892.

Richelsoph discloses various embodiments of an immobilization device for a connecting rod in an osseous anchoring element, e.g. 10''''''''', comprising retention means, 18''''''''', deforming elastically under a pressure force F and a blocking element, e.g. 52, comprising lugs, e.g. 55, which coact with the retaining means to permit the securement of the blocking element on the osseous anchoring element, a tightening screw, (see also column 15, lines 32-35) for permitting the immobilization in rotation and in translation of the connecting rod between the osseous anchoring element and the blocking element (see figure 17).

The osseous anchoring element has a head comprising two truncated vertical walls, delimiting a central opening of U shape whose bottom has a part cylindrical profile, each vertical wall is constituted by a central surface bordered laterally and on each side by elastic blades, e.g. 33', separated respectively from said central surface by vertical slots (see column 15, lines 19-24) wherein the elastic blades comprise a snap-in

Art Unit: 3733

tooth and a blocking element comprising a seat with a screw-threaded bore opening within the seat, a tightening screw coacting with the screw-threaded bore (see also column 15, lines 32-35) and lugs which coact respectively with a tooth secured to the elastic blades (see figure 17).

The head comprises two vertical walls of truncated profile disposed one facing the other and in parallel planes so as to delimit a first central opening of U shape carried by the axis  $XX'$  of the connecting rod and whose bottom has a part cylindrical profile, and a second opening perpendicular to the axis  $XX'$  and to the first opening (see figure 17). Furthermore, each elastic vertical wall is separated from the bottom of the central opening by a vertical slot giving a certain elasticity to each wall in a  $YY'$  direction (see figure 17). In addition, the two perpendicular openings permit delimiting at each point of the head elastic blades adapted pressure force  $F$ . Moreover, the pressure force  $F$  applied to the blocking element permits by means of lugs and vertical slots, the lateral deformation of the elastic blades in the direction of the central surface of each wall of the osseous anchoring element (see figure 17).

The two lugs form teeth comprising hooking portions separated by a vertical seat bordered laterally by ribs (see figure 17 and column 15, lines 19-24). In addition, the hooking portions are closed opposite the lateral surfaces by means of the corresponding vertical rib (see figure 17 and column 15, lines 19-24). Furthermore, the hooking portion of each lug is positioned retracted and at a certain distance  $d_l$  from the lateral and opposite surfaces of the blocking element (see figure 17 and column 15, lines 19-24). Moreover, the distance  $d$  separating the two lugs can be than the distance

Art Unit: 3733

provided between two teeth a same vertical wall of the osseous anchoring element (see figure 17 and column 15, lines 19-24).

With regard to the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Richelsoph, which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Response to Arguments***

Applicant's arguments filed 05 January 2009 have been fully considered but they are not persuasive.

The blocking element of Richelsoph comprises a seat (i.e., at least a supporting surface) with a cylindrical profile about a vertical central axis. In addition, it is noted that the blocking element comprises parallel lateral surfaces arranged "two by two" (e.g., the mutually facing slot surfaces in the lateral sides of the blocking element. The shape of the latching structure is set forth in the rejection. It is noted that the device comprises a convexly curved profile about a vertical central axis (see, e.g., Fig. 17).

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

Art Unit: 3733

For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733